

REMARKS/ARGUMENTS

Reconsideration and continued examination of the above-identified application are respectfully requested.

The amendment to the drawing, in particular Fig. 7, responds to the Examiner's request to number the drawings separately. Accordingly, Fig. 7 has been amended to refer to Fig. 7.1, Fig. 7.2, and Fig. 7.3. Furthermore, the specification has been amended to be consistent with this amendment to the figure.

In addition, various non-elected subject matter has been canceled by way of this Amendment. In addition, many claims which were dependent on non-elected claim 1 have been amended to be dependent on the elected invention, primarily claim 66. Accordingly, by way of this Amendment, claims 2, 4-16, 19-33, 36-40, 66-71, 74-97, 100-103, and 105 are pending. Claim 100 is withdrawn from consideration. The remaining claims are part of the elected invention. It is noted that with respect to claim 78, which was only objected to, the limitations of claim 66 have been incorporated into claim 78, and now claim 78 is an independent claim and claim 78 and the claims dependent thereon should be in condition for allowance since the Examiner only objected to these claims.

Furthermore, the subject matter of claims 34 and 35 have been incorporated into claim 66. Accordingly, full support for these amendments can be found in the application, including the claims as originally filed. Therefore, no questions of new matter should arise and entry of this amendment is respectfully requested.

In the Office Action, the Examiner has maintained the restriction requirement.

At the bottom of page 2 of the Office Action, the Examiner objects to Fig. 7 for containing more than one figure.

In response, as stated above, Fig. 7 has been amended by way of this Amendment to label each figure separately and the specification has been amended to be consistent with this change. The Examiner is respectfully requested to approve these drawing changes and to withdraw this objection.

At page 3 of the Office Action, the Examiner rejects claims 74-77 under 35 U.S.C. §112 second paragraph. The Examiner asserts that several claims are indefinite based on several phrases set forth in these claims. For the following reasons, this rejection is respectfully traversed.

With respect to claims 67 and 74, claim 67 has been amended to recite that a coupler is present, along with a third elongated instrument. Essentially, the scope of claims 67 and 74 remains the same. Accordingly, this rejection should be withdrawn.

At page 4 of the Office Action, the Examiner has objected to claims 66-68 for several informalities. The Examiner has made certain suggestions to make the claims more clear.

In response, these amendments have been made. The scope of these claims remains the same. The objections should be withdrawn.

At the bottom of page 4 of the Office Action, the Examiner rejects claims 70, 71, and 76 under 35 U.S.C. §101 because they are drawn to a non-statutory subject matter. The Examiner asserts that these claims positively recite a part of a human and therefore cannot be considered patentable subject matter. For the following reasons, this rejection is respectfully traversed.

These claims are appropriate since they are not claiming a part of a human, but are simply reciting where certain devices of the graft delivery system would be located with respect to a patient. Accordingly, the applicants believe that these claims are not claiming a part of a human, but are simply using a patient as a reference point. Furthermore, it is respectfully noted that claim 70, 71, and 76 do not recite "a human," but recite "a patient." It is also respectfully noted that Berg

et al. (U.S. Patent No. 6,508,252), relied upon by the Examiner, specifically mentions in claim 1 a method for installing a tubular graft . . . “in a patient’s tubular body structure . . .”. It is clear that this type of language is acceptable and has been previously acceptable by the United States Patent and Trademark Office. Furthermore, the other reference relied upon by the Examiner, Grudem et al. (U.S. Patent No. 6,511,491) further recites similar language with respect to “a patient.” Accordingly, the Examiner is respectfully requested to reconsider this rejection and to withdraw the rejection in view of the above comments.

At the bottom of page 5 of the Office Action, the Examiner provisionally rejects claims 66, 67, 71-73, and 77 under the judicially-created doctrine of obviousness-type double patenting as being unpatentable over claims 44, 45, 49-51, and 56 of co-pending Application No. 10/175,357. For the following reasons, this rejection should be withdrawn.

Since this a provisional rejection, the applicant believes that this rejection is premature since no claims have been patented in either application. The appropriate time for this rejection would be once the above-identified application has issued into a patent and the claims of co-pending Application No. 10/175,357 have been examined. Accordingly, for these reasons, this rejection should be withdrawn.

At page 6 of the Office Action, the Examiner rejects claims 66-71, 74-75, and 105 under 35 U.S.C. §102(e) as being anticipated by Berg et al. (U.S. Patent No. 6,508,252). The Examiner asserts that Berg et al. discloses a system using an elongated instrument which contains a mammary catheter and a mammary guide. The Examiner further asserts the system further includes elongated instruments and retrieving devices and couplers and the like. For the following reasons, this rejection is respectfully traversed.

Claim 66 recites a graft delivery system which comprises a first elongated instrument, a

second elongated instrument, and a retrieving device. Claim 66 further recites either that the third elongated instrument comprises a thoracic catheter and this thoracic catheter, in its diameter, further comprises a step-off to limit forward movement of the catheter. Claim 66 further recites details of the retrieving device.

It is respectfully submitted that Berg et al. does not teach or suggest these features with respect to the system set forth in Berg et al., especially the step-off to limit forward movement or a cone-shaped retrieving device and the like. In addition, Berg et al. does not teach the use of a radioopaque marker as set forth in some of the dependent claims. For these reasons, this rejection should be withdrawn.

At page 7 of the Office Action, the Examiner rejects claims 66 and 73 under 35 U.S.C. §102(e) as being anticipated by Grudem et al. (U.S. Patent No. 6,511,491). The Examiner asserts that Grudem et al. shows an elongated instrument having a mammary catheter and a mammary guide, along with a second elongated instrument and guidewire. The Examiner further asserts that the retrieving device of Grudem et al. includes a hollow cone device. For the following reasons, this rejection is respectfully traversed.

As stated above, Grudem et al. does not teach a third elongated instrument that comprises a thoracic catheter wherein the thoracic catheter, in its diameter, further comprises a step-off to limit further movement of the catheter, nor does Grudem et al. teach a cone-shaped retrieving device. With respect to Grudem et al., the applicant respectfully disagrees with the Examiner's argument that Grudem et al. includes a "retrieving device." The Examiner makes reference to catheter 182 that has a hollow cone device 180 and refers to Fig. 13 and argues that this is a retrieving device. The applicant respectfully disagrees. If one studies the description that refers to this particular device 180, for instance, beginning at column 10, line 32 of Grudem et al. and continuing to column

11, especially lines 1-8, one can clearly see that the nose portion 180 does not retrieve any mammary guide device or coronary guide device, nor is it capable of extracting the mammary guide device or coronary guide device. As stated at column 11, the nose portion 180 is pushed or gradually forced into the aperture by using balloon 18A and this cone device is used to dilate the aperture. The nose portion is then pushed in far enough into the aperture so that connector 10 is part way through the aperture. Then, as stated at column 11 and shown in Fig. 15 of Grudem et al., the next step is to push nose portion 180 further into conduit 202 by pulling catheter 182 further upstream. This causes the distal nose portion 180 to separate from connector 10 thereby exposing the connector and leaving it in the aperture through the conduit 202 side wall. It is clear that this device referred to by the Examiner is not a retrieving device and is not capable of being a retrieving device that is capable of retrieving the mammary guide device and coronary guide device and extracting the mammary guide device and coronary guide device. This nose portion is simply used to force open an aperture. Clearly, one skilled in the art would interpret this nose portion 180 of Grudem et al. to simply be nothing more than a device to gradually force open an aperture. Accordingly, the applicant respectfully disagrees that Grudem et al. anticipates claims 66 or 73.

Since Grudem et al. does not anticipate the subject matter of claims 66 or 73 and as recognized by the Examiner, Berg et al. does not teach or suggest a retrieving device comprising a cone-shaped hollow device or a retrieving device that is magnetic or electrically charged, claim 66 is also not anticipated by Berg et al. or Grudem et al. For these reasons, the subject matter of claim 66 and the claims dependent thereon are patentable over the cited art. Accordingly, for these reasons, this rejection should be withdrawn as well.

At the bottom of page 7 of the Office Action, the Examiner does indicate that claims 78-96 were only objected to and otherwise would be allowable if rewritten in independent form. As stated

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above, claim 78 has been rewritten in independent form and therefore, claims 78-96 are in condition for allowance.

Furthermore, it is noted that claim 72 was not rejected in any §102 rejection or other rejection. Accordingly, claim 72 should be allowable subject matter. This is especially true since Berg et al. and Grudem et al. do not teach or suggest a retrieving device that has one end that is magnetic or electrically charged.

The applicant and the undersigned further believe that in view of the above comments, the remaining claims are also in condition for allowance.

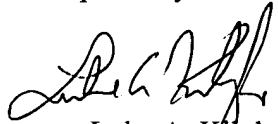
If the Examiner has any questions regarding the differences between the cited art and the claimed invention, the Examiner is encouraged to contact the undersigned by telephone.

CONCLUSION

In view of the foregoing remarks, the applicant respectfully requests the reconsideration of this application and the timely allowance of the pending claims.

If there are any other fees due in connection with the filing of this response, please charge the fees to Deposit Account No. 50-0925. If a fee is required for an extension of time under 37 C.F.R. § 1.136 not accounted for above, such extension is requested and should also be charged to said Deposit Account.

Respectfully submitted,



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Attachment: Replacement Sheet
Annotated Sheet Showing Changes